

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT KARL BARGER,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 06-1620
)	Judge Cercone
JOHN WALTON, et al.,)	Magistrate Judge Caiazza
)	
Defendants.)	

MEMORANDUM ORDER

Robert Karl Barger's civil rights suit was commenced with the filing of a petition to proceed *in forma pauperis* on December 4, 2006, 2004. The matter was referred to United States Magistrate Judge Francis X. Caiazza for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Court granted Barger's Motion to Proceed *In Forma Pauperis* (Doc. 2) and, on December 12, 2006, directed that he provide instructions for service as well as a completed notice and waiver of summons and copies of the Complaint for each named defendant on or before January 5, 2007. (Doc. 5). When the Plaintiff failed to comply, an Order was entered on January 12, 2007, issuing a Rule to Show Cause why the case should not be dismissed because of his failure to prosecute this action. The rule was returnable on or before January 30, 2007. (Doc. 6). Barger requested, and was granted, an extension of time to respond. (Docs. 7, 8). Instead of responding, Barger submitted an amendment to his Complaint which does not add new parties, or any new claims. (Doc. 12). On March 5, 2007, another rule was issued

on Barger, returnable on or before March 20, 2007, to show cause why this action should not be dismissed because of his repeated failure to provide proper instructions for service of the Complaint. (Doc. 15). Barger's response was to file another proposed Amended Complaint (Doc. 16), but no directions for service. The Magistrate Judge's Report and Recommendation, filed on March 29, 2007 (Doc. 17), recommended that this action be dismissed for failure to prosecute.

Barger filed objections on April 9, 2007 (Doc. 20) and brief in support thereof (Doc. 21). He asserts that he has sent directions for service and the appropriate forms "three times" since December, 2006, but that the Court has not received same. Barger also filed a letter with the court on April 13, 2007 (Doc. 22) in which he requested forms for service from the Court. On April 20, 2007, he sent another letter indicating that he had received the forms from the Clerk of Court (Doc. 23) and indicates that he intended to give them to the "Library C.O." for mailing. On April 30, 2007, Barger filed an affidavit in which he states that he has been denied needed dental treatment (Doc. 24). On May 23, 2007, Barger filed a "Motion for Special Appointment to Serve Process" (Doc. 25). This was followed the same day by an unexecuted "Notice of Lawsuit and Waiver of Services of Summons" (Doc. 26).

The Plaintiff has been given repeated opportunities to provide proper forms for service of process. His claim that he has not been able to successfully mail forms to the court is belied by the extensive filing he has made during this same period, all of which have reached the court.

After de novo review of the pleadings and documents in the case, together with the Report and Recommendation and the objections thereto, the following order is entered:

AND NOW, this 12th day of June, 2007,

IT IS HEREBY ORDERED that this case is DISMISSED FOR FAILURE TO PROSECUTE.

The Report and Recommendation of Magistrate Judge Caiazza, (Doc. 17), dated March 29, 2007, is adopted as the opinion of the court.

s/David S. Cercone
David S. Cercone
U.S. District Court Judge

cc: Robert Karl Barger, Jr.,
Westmoreland County Prison
3000 South Grande Boulevard
Greensburg, PA 15601